

Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549.

**VII. Cost-Benefit Analysis**

To assist the Commission in its evaluation of the costs and benefits that may result from the proposed exemption discussed in this release, commenters are requested to provide views and data relating to any costs and benefits associated with these proposals. It is expected that compliance burdens will decrease with respect to issuers who qualify for the proposed exemption, inasmuch as they would be able to raise up to \$5 million in capital without the burden and expense of compliance with the registration and reporting requirements of the federal securities laws.

**VIII. Summary of Initial Regulatory Flexibility Analysis**

An initial regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 603 concerning the proposed Rule 1001 exemption and the proposed amendment to Rule 144. The analysis notes that the purpose of the proposals is to relieve small businesses of federal registration requirements where the transaction is exempt from qualification under paragraph (n) of Section 25102 of the California Corporations Code.

As discussed more fully in the analysis, the changes would affect persons that are small entities, as defined by the Commission's rules. It is anticipated that small businesses that qualify for the proposed exemption would experience a reduction in reporting, recordkeeping and compliance burdens. The analysis also indicates that there are no current rules that duplicate, overlap or conflict with the proposed exemption.

As stated in the analysis, several possible significant alternatives to the proposals were considered, including, among others, establishing different compliance or reporting requirements for small entities or exempting them from all or part of the proposals. The Commission believes that there is no need for special small business alternatives, since the purpose of the proposed rulemaking is to reduce burdens for small business. The fact that larger entities also could take advantage of the rule should not detract from that purpose.

Written comments are encouraged with respect to any aspect of the analysis. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis if the proposals are adopted. A copy of the

analysis may be obtained by contacting James R. Budge, Office of Disclosure Policy, Division of Corporation Finance, at (202) 942-2910, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

**IX. Statutory Basis for the Proposal**

Regulation CA, Rule 1001 and the amendment to Rule 144 are proposed pursuant to Sections 3(b) and 19 of the Securities Act.

**List of Subjects in 17 CFR Part 230**

Registration requirements, Securities.

**Text of the Proposed Exemption**

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

**PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933**

1. The authority citation for Part 230 continues to read in part as follows:

**Authority:** 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78l, 78m, 78n, 78o, 78w, 78ll(d), 79t, 80a-8, 89a-29, 80a-30, and 89a-37, unless otherwise noted.

\* \* \* \* \*

2. By amending § 230.144 by removing the period at the end of paragraph (a)(3)(iv) and adding “; or” in its place and by adding paragraph (a)(3)(v), to read as follows:

**§ 230.144 Persons deemed not to be engaged in a distribution and therefore not underwriters.**

\* \* \* \* \*

(a) \* \* \*

(3) \* \* \*

(v) Securities acquired from the issuer that are subject to the resale limitations of Regulation CA (§ 230.1001).

\* \* \* \* \*

3. By adding a new undesignated center heading and § 230.1001, to read as follows:

**Regulation CA—Exemption for Certain Issues of Securities Exempt Under State Law**

**§ 230.1001 Exemption for transactions exempt from qualification under § 25102(n) of the California Corporations Code.**

**Preliminary Notes:** (1) Nothing in this section is intended to be or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors necessary to satisfy the antifraud provisions of the federal securities laws. This section only provides an exemption from the registration requirements of the Securities Act of 1933 (“the Act”) [15 U.S.C. 77a et seq.].

(2) Nothing in this section obviates the need to comply with any applicable state law relating to the offer and sales of securities.

(3) Attempted compliance with this section does not act as an exclusive election; the issuer also can claim the availability of any other applicable exemption.

(4) This exemption is not available to any issuer for any transaction which, while in technical compliance with the provision of this section, is part of a plan or scheme to evade the registration provisions of the Act. In such cases, registration under the Act is required.

(a) *Exemption.* Offers and sales of securities that satisfy the conditions of paragraph (n) of § 25102 of the California Corporations Code, and paragraph (b) of this section, shall be exempt from the provisions of Section 5 of the Securities Act of 1933 by virtue of Section 3(b) of that Act.

(b) *Limitation on and computation of offering price.* The sum of all cash and other consideration to be received for the securities shall not exceed \$5,000,000, less the aggregate offering price for all other securities sold in the same offering of securities, whether pursuant to this or another exemption.

(c) *Resale limitations.* Securities issued pursuant to this § 230.1001 are deemed to be “restricted securities” as defined in Securities Act Rule 144 [§ 230.144]. Resales of such securities must be made in compliance with the registration requirements of the Act or an exemption therefrom.

Dated: June 27, 1995.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95-16387 Filed 7-7-95; 8:45 am]

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**17 CFR Parts 230, 240, 249 and 260**

[Release Nos. 33-7186; 34-35895; 39-2333; File No. S7-16-95]

RIN Number 3235-AG48

**Relief From Reporting by Small Issuers**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission is publishing proposals designed to reduce burdens on small business by doubling the asset threshold that subjects companies to registration and periodic reporting under the Securities Exchange Act of 1934 (the “Exchange Act”) from \$5 million to \$10 million.

**DATES:** Comments should be submitted to the Commission on or before September 8, 1995.

**ADDRESSES:** All comments concerning the proposed rules should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549 and should refer to File Number S7-16-95. Comment letters will be available for inspection and copying in the Commission public reference room at the same address.

**FOR FURTHER INFORMATION CONTACT:** Richard K. Wulff, Office of Small Business Policy, Division of Corporation Finance, (202) 942-2950.

**SUPPLEMENTARY INFORMATION:** The Commission is publishing for comment proposed amendments to Rules 12g-1, 12g-4 and 12h-3<sup>1</sup> under the Exchange Act.<sup>2</sup> These amendments would increase the total asset threshold for Exchange Act registration and reporting from \$5 million to \$10 million. The Commission also is proposing conforming amendments to the description of Form 15<sup>3</sup> and to certain of the Commission's definitions of the term "small entity"<sup>4</sup> under the Regulatory Flexibility Act.<sup>5</sup>

### I. Current Requirements and Proposed Revisions

Under the current rules, an issuer that has 500 or more record holders of a class of equity securities and total assets of \$5 million or more must register its securities under the Exchange Act.<sup>6</sup> Issuers that must register are required to comply with the periodic reporting and other provisions applicable to public companies contained in the Exchange Act.<sup>7</sup> The asset threshold was originally set at \$1 million in Section 12(g) of the Exchange Act. The Commission has increased the amount on two occasions: from \$1 million to \$3 million in 1982,<sup>8</sup> and from \$3 million to the current \$5 million in 1986.<sup>9</sup> As a part of its continuing efforts to reduce regulatory burdens on smaller companies, the

Commission is now proposing to raise this asset threshold to \$10 million.

Under the proposed revision to Rule 12g-1, an issuer would not be required to register under Section 12(g) until it has 500 or more record holders of a class of equity securities and total assets of \$10 million or more.<sup>10</sup> This revision would not change requirements that securities traded on national exchanges<sup>11</sup> or the National Association of Securities Dealers Automated Quotation System ("NASDAQ")<sup>12</sup> be registered pursuant to Section 12 of the Exchange Act. In addition, a company that conducts a public offering registered under the Securities Act of 1933 (the "Securities Act")<sup>13</sup> would continue to be subject to reporting pursuant to Section 15(d) of the Exchange Act unless the company becomes eligible to suspend such reporting. The proposals also would raise the asset threshold for termination of Section 12(g) registration and suspension of Section 15(d) reporting from \$5 million to \$10 million, but would not change the other tests for such termination and suspension.<sup>14</sup>

The Commission has long recognized that the cost of compliance with Exchange Act reporting requirements is relatively greater for small companies than for larger ones;<sup>15</sup> similarly, the Commission continuously examines and refines its securities registration exemptions under the Securities Act in an effort to lower the cost of raising capital for small business.<sup>16</sup> For

example, in 1992 as a part of the Commission's Small Business Initiatives the Commission used the full amount of its Securities Act Section 3(b)<sup>17</sup> exemptive authority to increase the amount that may be raised in a Regulation A<sup>18</sup> exempt small offering from \$1.5 million to \$5 million. However, under the current Section 12(g) threshold, a company that is not traded on an exchange or NASDAQ, and has not conducted a registered public offering, can nevertheless become subject to the Exchange Act registration and reporting expense even though the company has conducted only one, or a limited number of, exempt small offerings. For example, a company that conducts an exempt Regulation A offering and raises the full \$5 million permitted under the rule would likely be required to register under Section 12(g) under the current \$5 million asset test (assuming it has the requisite number of shareholders). This is so even though a principal benefit of the Regulation A exemption is that, unlike a Securities Act registered transaction, it does not give rise to an Exchange Act reporting obligation. This burden appears to significantly reduce the utility of the small offering exemptions for small companies. The increase to \$10 million in the Section 12(g) threshold proposed today should better enable companies to use the small offering exemptions without becoming subject to Exchange Act reporting.<sup>19</sup>

There currently are approximately 670 issuers with between \$5 million and \$10 million in total assets that report with the Commission.<sup>20</sup> Had the proposed increase in the asset threshold been in effect, these companies would not have been required to register and report with the Commission, unless they had voluntarily decided to do so, either because their securities are traded on a national securities exchange or NASDAQ, or because they chose to conduct a Securities Act registered offering. Of the 670, approximately 550 are traded on an exchange or NASDAQ.<sup>21</sup> A number of these

Securities Act and Exchange Act compliance burdens for small business. Release Nos. 33-6949 (July 30, 1992) [57 FR 36442] and 6996 (April 28, 1993) [58 FR 26509].

<sup>17</sup> 15 U.S.C. 77c(b).

<sup>18</sup> 17 CFR 230.251-230.263.

<sup>19</sup> In 1992, the Commission requested Congress to raise the ceiling for its small offering exemptive authority under Section 3(b) of the Securities Act to \$10 million. See S. 2518, 102d Cong., 2d Sess. (1992).

<sup>20</sup> At present, approximately 1,670 reporting issuers have less than \$10 million in assets.

<sup>21</sup> At present, approximately 975 of the approximately 1,670 reporting issuers that have less

Continued

<sup>10</sup> The proposed modification to Rule 12g-1 would retain the standard with respect to foreign private issuers providing that if a foreign private issuer has securities quoted in an automated interdealer quotation system it would remain subject to registration under Section 12(g).

<sup>11</sup> Securities traded on a national securities exchange must be registered under the Exchange Act pursuant to Section 12(b) [15 U.S.C. 78l(b)] of that Act.

<sup>12</sup> Pursuant to Schedule D to the NASD's By-Laws, securities traded on the NASDAQ system must be registered pursuant to Section 12 of the Exchange Act, CCH NASD Manual para. 1803.

<sup>13</sup> 15 U.S.C. 77a et seq.

<sup>14</sup> Rules 12g-4 and 12h-3 currently allow for termination of registration of a class of securities under Section 12(g) and suspension of the duty to file reports under Section 15(d) when the class of securities is held of record by less than 300 persons, or by less than 500 persons where the total assets of the issuer have not exceeded \$5 million on the last day of each of the issuer's three most recent fiscal years. Also, the Section 15(d) reporting obligation cannot be suspended under Rule 12h-3 for fiscal year in which a Securities Act registration statement relating to the class of securities becomes effective. The proposals would amend Rules 12g-4 and 12h-3 to change the asset test from \$5 million to \$10 million.

<sup>15</sup> See Securities Act Release 6605 (September 30, 1985) [50 FR 41162].

<sup>16</sup> The Commission's Small Business Initiatives and Additional Small Business Initiatives adopted in 1992 and 1993 were designed to reduce both

<sup>1</sup> 17 CFR 240.12g-1, 240.12g-4 and 240.12h-3.

<sup>2</sup> 15 U.S.C. 78a et seq.

<sup>3</sup> 17 CFR 249.323. Form 15 is filed by an issuer to notify the Commission that it is terminating its registration under Section 12(g) of the Exchange Act [15 U.S.C. 78l(g)] or suspending its reporting under Section 15(d) [15 U.S.C. 78o(d)].

<sup>4</sup> The definitions are found at 17 CFR 230.157; 17 CFR 240.0-10; and 17 CFR 260.0-7.

<sup>5</sup> 5 U.S.C. 601 et seq.

<sup>6</sup> See Exchange Act Section 12(g) [15 U.S.C. 78l(g)] and Rule 12g-1.

<sup>7</sup> E.g., the proxy requirements of Section 14, the Williams Act and the short-swing profit provisions of Section 16 of the Exchange Act.

<sup>8</sup> Release No. 34-18647 (April 15, 1982) [47 FR 17046].

<sup>9</sup> Release No. 34-23406 (July 8, 1986) [51 FR 25360].

companies would become eligible to terminate registration and reporting if the proposals are adopted, if they chose to do so, assuming the number of shareholders does not exceed the applicable limits for termination.<sup>22</sup> Of course, many of these companies may continue to report by choice in order to retain their ability to trade on an exchange or NASDAQ or as a result of additional registered public offerings, so the Commission cannot predict with any certainty the number of issuers whose Exchange Act registration and reporting requirements that may terminate as a result of the increase in the total assets criterion from \$5 million to \$10 million.

Comment is requested on whether the proposed increase in the Section 12(g) asset threshold is appropriate and useful for small businesses. Is \$10 million in assets the appropriate level for subjecting companies that have not otherwise voluntarily entered the reporting system to this system? Should the increase be smaller than that proposed, e.g., \$7.5 million, or greater, e.g., \$15 million. Commenters are asked to specifically discuss their reasons for any suggested amount.

## II. Proposed Revisions to Regulatory Flexibility Act Definitions

The Commission is simultaneously proposing technical conforming amendments to the definition of a small entity for purposes of the Regulatory Flexibility Act. A small entity is currently defined as an issuer whose total assets on the last day of its most recent fiscal year were \$5 million or less, where the entity is not an investment company. Under the proposals the total assets criterion would be increased to \$10 million to conform with the total asset criterion proposal for purposes of entering into or exiting from Exchange Act registration and reporting requirements.<sup>23</sup>

than \$10 million in assets have securities that are traded either on an exchange or NASDAQ.

<sup>22</sup> Companies that take steps to reduce the number of shareholders in order to deregister, or otherwise engage in a Rule 13e-3 transaction [17 CFR 240.13e-3] with a view to deregistration, are reminded of the need to comply with the "going private" regulations.

<sup>23</sup> Release Nos. 33-6380, 34-18452, 35-22371, 39-639, 1C-12194 and 1A-791, (January 28, 1982) [47 FR 5215]. The proposals would thus continue the parity that exists between the definition of a small entity for purposes of the Regulatory Flexibility Act and the concept of a small issuer for purposes of Exchange Act reporting and registration requirements. Rule 157(a) under the Securities Act, Rule 0-10(a) under the Exchange Act and Rule 0-7 under the Trust Indenture Act of 1939 would be affected by the proposed conforming modifications to the definition of a small entity for purposes of the Regulatory Flexibility Act. The proposed modifications would not affect the definition of a

## III. Request for Comment

Any interested persons wishing to submit written comments on the proposed increase in the reporting threshold as explained in this release are invited to do so by submitting them in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comment is requested from the point of view of the public interest and the issuers that would be affected; comments should address any possible effects on investor protection resulting from the proposed increase in the threshold. The Commission further requests comments on any competitive burdens that might result from the adoption of the proposals. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under Section 19(a) of the Securities Act and Section 23 of the Exchange Act. Comment letters should refer to File Number S7-16-95. All comments received will be available for public inspection and copying in the Commission's public reference room, 450 Fifth Street NW., Washington, DC 20549.

## IV. Cost-Benefit Analysis

To assist the Commission in its evaluation of the costs and benefits that may result from the proposed increase in the threshold discussed in this release, commenters are requested to provide views and data relating to any costs and benefits associated with these proposals. It is expected that compliance burdens will decrease with respect to issuers who qualify for the proposed higher threshold, inasmuch as issuers below the threshold will not have to register and report pursuant to the requirements of the Exchange Act and issuers that are currently reporting but who would otherwise now be below the threshold may choose to opt out of their reporting requirements.

## V. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an initial regulatory flexibility analysis in accordance with 5 U.S.C. 603 regarding the changes to Exchange Act Rules 12g-1, 12g-4, and 12h-3 and the description of Form 15, as well as to Regulatory Flexibility Act definitions of "small

small entity for purposes of the Regulatory Flexibility Act found in Rule 0-10 under the Investment Company Act of 1940, Rule 0-7 under the Investment Advisers Act of 1940, or Rule 110 under the Public Utility Holding Company Act of 1935, as such Acts contain definitions of a small entity for purposes of the Regulatory Flexibility Act that do not relate to a total asset criterion.

entity." Among other things, the analysis notes that these proposals are intended to reduce the cost of compliance with the Exchange Act reporting requirements, which is relatively greater for small companies than for larger issuers.

The proposals would not increase the Exchange Act reporting burden for any issuer and no additional recordkeeping or reporting will be required except a certification/notification to the Commission of the termination of any issuer's reporting duties under cover of Form 15. Such a filing may require the skills of a professional familiar with the securities laws, and some services by management, but does not require any recordkeeping or reporting beyond that already required by the Exchange Act.

The analysis indicates that a number of alternatives were considered in crafting the proposals, including the establishment of differing compliance or reporting requirements for small businesses, the clarification, consolidation or simplification of rules for small entities, the use of performance rather than design standards, and exemption from coverage of Commission rules for small entities. As more fully explained in the analysis, there is no better alternative to simplify, consolidate or better accommodate small business entities than the chosen approach, which is specifically designed to reduce regulatory burdens on small issuers.

A copy of the initial regulatory flexibility analysis may be obtained by contacting Twanna M. Young, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549 at (202) 942-2950.

## VI. Statutory Basis

The amendments to the Commission's rules and form are being proposed by the Commission pursuant to Section 19 of the Securities Act; Sections 12, 13, 15 and 23(a) of the Securities Exchange Act; and Section 319 of the Trust Indenture Act of 1939.

Section 12(h) of the Exchange Act authorizes the Commission to exempt any issuer, or class of issuers, from Section 12(g) upon a finding that, by reason of the number of public investors, amount of trading interest in the securities, the nature and extent of the activities of the issuer, income or assets of the issuer, or otherwise, that such action is not inconsistent with the public interest or the protection of investors. The proposal today recognizes that the relatively higher cost of reporting for small issuers must be weighed against the need for reporting.

The Commission historically has focused on the importance of continuous reporting when there is a trading market, where investors have an expectation that companies will provide continuous reports under the Commission's continuous reporting system, and has found the absence of such a market support for the conclusion that small companies should be given the opportunity to avoid the cost of continuous reporting.<sup>24</sup> Today's proposal is consistent with this approach since companies with securities traded on an exchange or NASDAQ would continue to be subject to Section 12 registration and reporting, and the expectation of investors in companies traded in such markets that these companies will continue to be subject to periodic reporting would not be altered. In addition, the proposal furthers the policies of Section 3(b) of the Securities Act to allow small offerings to be conducted without subjecting the issuer to registration under Section 12 of the Exchange Act.

#### List of Subjects in 17 CFR Parts 230, 240, 249 and 260

Reporting and recordkeeping requirements, Securities.

#### Text of Proposals

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

#### PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

#### PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

#### PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

#### PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

1. The authority citation for Part 230 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78l, 78m, 78n, 78o, 78w, 78ll(d), 79t, 80a-8, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

\* \* \* \* \*

2. The authority citation for Part 240 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s,

78w, 78x, 78ll(d), 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 and 80b-11, unless otherwise noted.

\* \* \* \* \*

3. The authority citation for Part 249 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

\* \* \* \* \*

4. The authority citation for Part 260 continues to read as follows:

**Authority:** 15 U.S.C. 77eee, 77ggg, 77nnn, 77sss, 78ll(d), 80b-3, 80b-4, and 80b-11.

#### Parts 230, 240, 249, and 260 [Amended]

5. 17 CFR Parts 230, 240, 249 and 260 are amended by removing the reference to "\$5 million" and adding in its place "\$10 million" in the following sections:

- (a) 17 CFR 230.157(a)
- (b) 17 CFR 240.0-10(a)
- (c) 17 CFR 240.12g-1
- (d) 17 CFR 240.12g-4(a)(1)(ii)
- (e) 17 CFR 240.12g-4(a)(2)(ii)
- (f) 17 CFR 240.12h-3(b)(1)(ii)
- (g) 17 CFR 240.12h-3(b)(2)(ii)
- (h) 17 CFR 249.323(a)
- (i) 17 CFR 260.0-7

Dated: June 27, 1995.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

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#### 17 CFR Part 230

[Release Nos. 33-7187; 34-35896; File No. S7-17-95]

RIN 3235-AG53

#### Revision of Holding Period Requirements in Rule 144; Section 16(a) Reporting of Equity Swaps and Other Derivative Securities

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission is proposing to amend the holding period requirements contained in Rule 144 (d) and (k) to permit resales of "restricted" securities after a one-year, rather than a two-year, holding period, if the sale complies with all of the other provisions of Rule 144. Securities held by non-affiliated shareholders could be resold without restriction after a holding period of two, rather than three years. In addition, the Commission is requesting comment on whether Rule 144 should be revised to address new trading strategies, such as equity swaps, and is reminding persons subject to reporting under Section 16 of the Securities

Exchange Act of 1934 (the "Exchange Act") that reporting of these transactions is required under the current rules.

**DATES:** Comments must be submitted on or before September 8, 1995.

**ADDRESSES:** Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. All comment letters should refer to File No. S7-17-95 and will be available for public inspection and copying in the Commission's Public Reference Room.

**FOR FURTHER INFORMATION CONTACT:** Richard K. Wulff, Office of Small Business Policy, Division of Corporation Finance at (202) 942-2950.

**SUPPLEMENTARY INFORMATION:** The Commission is proposing to shorten the holding periods in Securities Act of 1933 (the "Securities Act")<sup>1</sup> Rule 144,<sup>2</sup> the non-exclusive safe harbor for resales of "restricted" securities<sup>3</sup> and securities held by affiliates of the issuer. Under the proposal, the holding period for resales of limited amounts of securities by any person would be reduced from two years to one year, and the holding period for resales by non-affiliates without compliance with any provisions of the rule would be reduced from three years to two years.<sup>4</sup> This release also includes a discussion of whether Rule 144 should be amended to reflect new trading strategies, such as equity swaps, and a reminder to persons subject to reporting under Section 16 of the Exchange Act<sup>5</sup> that reporting of these transactions is required under the current rules.

<sup>1</sup> 15 U.S.C. 77a *et seq.*

<sup>2</sup> 17 CFR 230.144.

<sup>3</sup> "Restricted securities" are defined in Rule 144(a)(3). See *infra* Note 7.

<sup>4</sup> The Commission has established the Advisory Committee on the Capital Formation and Regulatory Processes (the "Advisory Committee"), chaired by Commissioner Steven M.H. Wallman. The Advisory Committee is considering fundamental issues relating to the regulatory framework governing the capital formation process, including whether the current system of registering securities offerings should be replaced with a company registration system. The recommendations of the Advisory Committee may result in rule proposals or legislative recommendations that, if endorsed by the Commission, ultimately may address the matters discussed in this release. Under some of the company registration models now being considered by the Advisory Committee, many of the legal distinctions between publicly offered and privately placed securities would be eliminated, including the concept of restricted securities. Securities issued by a company registered with the Commission would be freely tradeable, regardless of the public or private character of the transaction.

<sup>5</sup> 15 U.S.C. 78p.

<sup>24</sup> See Release 33-6605 (September 30, 1985) [50 FR 41162].